

Memorandum

To : MARGIT ARAMBURU
Executive Director
Delta Protection Commission

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Subject : Supreme Court Decision in Bunch v. Coachella Valley Water Dist.

As you will recall, in 1996 the Commission authorized the filing of amicus curiae briefs with the California Supreme Court in two important flood control cases: Akins v. State of California and Bunch v. Coachella Valley Water District. This office filed amicus briefs in both cases last year. The Court ultimately decided to resolve the Bunch case first. It held oral arguments in Bunch on February 11, 1997. At the invitation of defendant Coachella Valley Water District (the party in support of whom we filed our brief), we participated in the oral arguments before the Supreme Court.

The issue in both Bunch and Akins is the same: when government flood control agencies are sued in inverse condemnation for damage to private property caused by project failure in storm conditions, should government liability be measured by a "reasonableness" standard or, alternatively, on a theory of strict liability?

The California Supreme Court issued its decision in Bunch on May 8, 1997. The Court unanimously adopted the legal standard advanced by both the District and the Commission: "When a water project fails...causing flood damage, the issue is whether the system's design, construction, and maintenance were reasonable." (Slip op. at 3 (emphasis added).) A copy of the Court's decision is attached for your information.

Facts

Bunch involves flood damage to private property in the Coachella Valley in Southern California. In July 1979, Tropical Storm Delores struck the area. Delores is described by the Court as "the most severe tropical storm in the recorded history of the state; it is sometimes called the '300-year flood.'" (Id. at 4.)

Severe desert flooding caused by Delores overwhelmed the District's flood control facilities, causing about \$20 million in property damage to developed areas normally protected by those facilities. The Bunches' apartment building was inundated with water during the storm, resulting in property damage to them totalling \$690,000. The Bunches responded by suing the District in inverse condemnation, seeking compensation for the "physical invasion" and destruction of their property."

The California Supreme Court's Decision

The Supreme Court's May 8th decision holds that: 1) flood damage cases of this type brought under the Takings Clause should be decided based on the court's determination of whether the government defendant's actions, under all the relevant circumstances, were reasonable; and 2) the trial court record demonstrates that the District's conduct in Bunch was reasonable, and that the District is therefore not liable to plaintiffs for a physical taking of their property.

In reaching this conclusion, the Court expressly embraced the policy arguments advanced in the Commission's amicus brief. Perhaps the opinion's most important passage states:

"[T]he placement, design, and construction of even the most effective [flood control] system inherently involve a complex balancing of interests and risks. Whatever choice the responsible agency makes...will almost certainly increase certain risks in order to reduce others...[S]trict and 'open-ended' liability for the failure of a project whose overall design, construction, operation, and maintenance was 'reasonable' would unduly deter the development of these vital bulwarks against common disaster." (Id. at 31.)

Bunch relies on an earlier Supreme Court decision to identify for lower courts, property owners and government flood control agencies alike the specific factors the Court deems relevant in

1. The companion Akins case arose out of similar facts: private property owners in Sacramento, Sutter and Yuba Counties suffered considerable flood damage arising out of the unprecedented rainstorms of 1986. In Akins, the property owners brought suit against not only the local flood control and reclamation districts, but also against the State of California. The Attorney General represents defendant State of California in that action, along with amicus Commission. While the Supreme Court's decision in Bunch does not directly dispose of the Akins case, we are hopeful that the former opinion will ultimately result in a similar, favorable result in Akins.

assessing the reasonableness of a government flood control agency's conduct: 1) the overall public purpose being served by the project; 2) the degree to which the property owner's loss is offset by reciprocal benefits; 3) the availability to the public entity of feasible alternatives with lower risks; 4) the severity of the plaintiff's damage in relation to risk-bearing capabilities; 5) the extent to which private property damage of the type sustained is generally considered a normal risk of land ownership; and 6) the degree to which similar damage is distributed at large over all project beneficiaries or, alternatively, is peculiar only to the injured property owner. (Id. at 21-22.)

Finally, the Court accepted the Commission's arguments that this "reasonableness" standard should be applied expansively to include reference to a government defendant's overall flood control system, regional needs, fiscal constraints, etc. (Id. at 22, n. 1, 33-35.)

Analysis

The Supreme Court's unanimous decision in Bunch should be welcome news to state and local flood control entities throughout California. At the most basic level, the opinion eliminates the specter of "open-ended liability on public entities charged with creating and maintaining flood control improvements." (Id. at 30.) As the Commission noted in its amicus brief, the fiscal burdens associated with the strict liability standard advanced by plaintiffs in Bunch would have "discourage[d] the development of needed public works." (Ibid.)

As more and more flood-prone regions of California are developed, they will inevitably be threatened by storms and flooding that even the most extensive flood control facilities cannot fully prevent. The January 1997 floods are but the most recent illustration of that truism. Development within virtually the entire Central Valley, for example, is dependent on flood control projects of one form or another. (California historian Robert Kelley aptly characterized the pristine Central Valley of the mid-nineteenth century as a vast "inland sea.")


Recent experience demonstrates that flood damage inevitably begets flood litigation brought against government defendants. The Bunch decision does not guarantee that such litigation will be eliminated or even significantly abated. What Bunch does suggest is that government flood control agencies which act reasonably under all the relevant circumstances will not be held liable in such cases. Nor need they henceforth fear fiscal liability based solely on an "insurer-of-last-resort" theory. The Supreme Court emphasized in Bunch that needed,

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future flood control facilities should be allowed to go forward, without the threat that their construction will trigger legal liability against the project agencies.

As we noted in our amicus brief, the Bunch decision also has key implications for land use planning agencies such as the Commission. The "reasonableness" standard embraced by the Court expressly incorporates notions of "assumption of risk" and "reciprocity of advantage." (Slip op. at 21-22.) Developers or landowners who insist on building in floodprone areas should not be heard to complain later about damage to their property that is caused by inevitable, record storms and floods. And perhaps the Bunch decision will temper the willingness of some property owners to put themselves and their property in harms' way.

Please let us know if you have any questions about the attached Supreme Court opinion in Bunch or this memo.



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attach.

cc: Pat McCarty--Chairman, Delta Protection Commission
Bob Potter--DWR/DPC
Maureen Gorsen--Resources Agency (all w/attach.)